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**PROPERTY TAX DIVISION**  
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**PROPERTY TAX BULLETIN NO. 18**  
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**SUBJECT: FARM AND OPEN SPACE TAX LAW**

REFERENCE: Title 36, M.R.S.A., Sections 1101 - 1121 as amended by PL 2004, c. 619

1. **General Information.** The Farm and Open Space Tax Law provides for the valuation of land which has been classified as farmland or open space land based on its current use as farmland or open space, rather than its potential fair market value for more intensive uses other than agricultural or open space. The purpose of this bulletin is to explain the more important features of this law. As used in this bulletin, the title "assessor(s)" means the assessor or board of assessors of a municipality, the chief assessor of a Primary Assessing Area and the State Tax Assessor in the case of the Unorganized Territory.

2. **Farmland**

A. **Valuation** - The assessor(s) for each taxing jurisdiction shall establish the 100% valuation per acre based upon the current use value of farmland utilized for agricultural or horticultural purposes. The values adopted shall be based on such considerations as farmland rentals, farmer-to-farmer sales, soil types and quality, commodity values, topography and after considering state developed guidelines for agricultural valuation. These values shall not reflect potential developmental or market value usages other than agricultural or horticultural use. In addition, the values shall not reflect either road or shore frontage. See Guidelines for Agricultural Valuation on page 8.

The assessor(s) shall record, in the municipal office of the town in which the farmland is located, the value of the farmland as established under this subchapter and the value at which the farmland would have been assessed had it not been classified under this subchapter.

B. **Requirement for Classification**

(1) **Minimum size** - The tract must contain at least 5 contiguous acres. An application may be made for more than 1 tract of property as long as one of the tracts contains 5 contiguous acres.

(2) **Use** - The tract must be used for farming, agriculture, or horticultural activities, but may include woodland and wasteland within the farm unit. (Horticultural means land which is engaged in the production of vegetables, tree fruits, small fruits, flowers and woody or herbaceous plants.)

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(3) Income Requirement - The tract must contribute to a gross income per year of at least \$2,000 in one of the 2, or 3 of the 5 calendar years preceding the date of application for classification. Gross income includes the value of commodities produced for consumption by the farm household.

(4) Income Report - The owner must file with the assessor by April 1st of each fifth year a determination of the gross income derived by either the owner or lessee in each of the previous five years from acreage classified as farmland.

C. Provisional Classification

The owner of a parcel of farmland which meets all the requirements except the gross income requirement may apply for a 2-year provisional classification as farmland under this subchapter. The parcel shall be provisionally classified and subject to the provisions of this subchapter.

If at the end of the 2-year period, the land does not qualify, the owner pays the following penalty:

An amount equal to the taxes which would have been assessed had the property been assessed at its fair market value on April 1 for the 2 preceding tax years less the taxes paid during those 2 preceding years and interest at the legal rate on those amounts which would have been payable.

3. Open Space Land

A. Valuation of Open Space Land

(1) Valuation Method - For purposes of this subchapter, the current use value of open space land is the sale price that particular open space parcel would command in the marketplace if it were required to remain in the particular category or categories of open space land for which it qualifies, adjusted by the certified ratio.

The values may be established based on such considerations as sales of land subject to permanent conservation restrictions, sales of land subject to enforceable deed restrictions, enhancement to unclassified appurtenant land areas under same ownership, before and after appraisals of permanently restricted land in the region and other relevant factors. These values may not reflect development or market value purposes other than open space use.

(2) Alternative Valuation Method - Notwithstanding any other provision of law, if an assessor is unable to determine the valuation of open space land under the conventional method above, the assessor may value that land under the following *alternative method*. The assessor may reduce the assessed valuation, as adjusted by the certified ratio of similar land in the municipality but without conservation easement restrictions, by the cumulative percentage reduction for which the land is eligible according to the following categories.

a. All ordinary open space land is eligible for a reduction of 20% off the standard value.

b. Permanently protected open space land is eligible for the reduction set in paragraph "a" and an additional 30%; in other words, ½ off the standard value.

c. Forever wild open space land is eligible for the reduction set in paragraphs "a" and "b" and an additional 20%; in other words, 70% off the standard value.

d. Public access open space land is eligible for the applicable reduction set in paragraph “a”, “b” or “c” *and* an additional 25%; in other words, up to 95% off the standard value\*.

Notwithstanding the above, \*the value of forested open space land may not be reduced to less than the values certified under the Tree Growth Tax Law and the open space land valuation may not exceed just value as required under §701-A.

(3) Definition of Land Categories Eligible for Additional Percentage Reduction

- Permanently protected open space is an area of open space land that is subject to restrictions prohibiting building development under a perpetual conservation easement or as an open space preserve owned and operated by a nonprofit entity committed to conservation and will permanently preserve the property in its natural, scenic or open character. (50% off)
- Forever wild open space is an area of open space land that is permanently protected and subject to restrictions or committed to uses by a nonprofit entity committed to conservation and will ensure that in the future the natural resources on that protected property will remain unaltered, except for: Fishing or hunting; Harvesting shellfish in the intertidal zone; Prevention of the spread of fires or disease; or Providing opportunities for low-impact outdoor recreation, nature observation and study. (70% off)
- Public access open space is any area of open space land allowing public access by reasonable means and the applicant agrees to refrain from taking action to discourage or prohibit daytime, non-motorized and nondestructive public use. The applicant may permit, but is not obligated to permit as a condition of qualification for public access status, hunting, snowmobiling, overnight use or other more intensive outdoor recreational uses. The applicant may impose temporary or localized public access restrictions to: Protect active habitat of endangered species; Prevent destruction or harm to fragile protected natural resources; or protect the recreational user from any hazardous area. (Additional 25% off)

B. Standards for Classification

- (1) Minimum size - There is no minimum acreage requirement for Open Space. However, minimum area(s) and setback(s) for non-conforming use must be excluded from classification.
- (2) Use - The tract must be preserved or restricted in use to provide a public benefit by conserving scenic resources; enhancing public recreation opportunities; promoting game management; or preserving wildlife or wildlife habitat.
- (3) Developed Lands - Any building or improvement area(s) are excluded from classification as open space land. Each excluded area must include at least the minimum lot size and, for improvements within the 250 foot shoreland area (75 feet on streams), the minimum shoreland frontage required by the applicable minimum lot standards or zoning ordinance for the area in which the land is located, whichever is larger. The shoreland frontage requirement is waived if: The affected frontage is part of a contiguous shore path or a beach for which there is or will be, once classified, regular and substantial use by the public; or The legislative body of the municipality determines that a public benefit will be served by preventing future development near the shore or by securing access for the public on the particular shoreland area that would otherwise be excluded from classification. Title 38, § 435.

C. Public Benefit Factors

Factors appropriate to one application may be irrelevant in determining the public benefit of another application. A single Factor, whether listed here or not, may be determinative of public benefit. Among the Factors to be considered are:

- (1) The importance of the land by virtue of its size or uniqueness in the vicinity or proximity to extensive development or comprising an entire landscape feature;
- (2) The likelihood that development of the land would contribute to degradation of the scenic, natural, historic or archeological character of the area;
- (3) The opportunity of the general public to appreciate significant scenic values of the land;
- (4) The opportunity for regular and substantial use of the land by the general public for recreational or educational use;
- (5) The importance of the land in preserving a local or regional landscape or resource that attracts tourism or commerce to the area;
- (6) The likelihood that the preservation of the land as undeveloped open space will provide economic benefit to the town by limiting municipal expenditures required to service development;
- (7) Whether the land is included in an area designated as open space land or resource protection land on a comprehensive plan or in a zoning ordinance or on a zoning map as finally adopted;
- (8) The existence of a conservation easement, other legally enforceable restriction, or ownership by a nonprofit entity committed to conservation of the property that will permanently preserve the land in its natural, scenic or open character;
- (9) The proximity of other private or public conservation lands protected by permanent easement or ownership by governmental or nonprofit entities committed to conservation of the property;
- (10) The likelihood that protection of the land will contribute to the ecological viability of a local, state or national park, nature preserve, wildlife refuge, wilderness area or similar protected area;
- (11) The existence on the land of habitat for rare, endangered or threatened species of animals, fish or plants, or of a high quality example of a terrestrial or aquatic community;
- (12) The consistency of the proposed open space use with public programs for scenic preservation, wildlife preservation, historic preservation, game management or recreation in the region;
- (13) The identification of the land or of outstanding natural resources on the land by a legislatively mandated program, on the state, local or federal level, as particular areas, parcels, land types or natural resources for protection including, but not limited to, the Register of Critical Areas under Title 5, chapter 312; the laws governing wildlife sanctuaries and management areas under Title 12, sections 7651 and 7652; the laws governing the State's rivers under Title 12, chapter 200; the natural resource protection laws under Title 38, chapter 3, subchapter I, article 5-A; and the Maine Coastal Barrier Resources Systems under Title 38, chapter 21; or
- (14) Whether the land contains historic or archeological resources listed in the National Register of Historic Places or is determined eligible for such a listing by the Maine Historic Preservation Commission, either in its own right or as contributing to the significance of an

adjacent historic or archeological resource listed, or eligible to be listed, in the National Register of Historic Places.

(15) Whether the land is maintained in accordance with criteria that are adopted under local ordinance that provide for preserving the integrity of historically important structures or conserving a scenic view (Title 30-A §5730).

(16) Whether the land contains a wildlife habitat, which is subject to a written management agreement between the landowner and either the Department of Inland Fisheries and Wildlife or the Department of Conservation to ensure that the habitat benefits provided by the land are not lost.

Land containing structures or any substantial improvements; the owner shall indicate on the application schedule and classification map the area(s) within the parcel containing improvements and exclude from open space classification area(s) equal to the applicable building lot size prescribed by the zoning regulations relevant to that site.

#### 4. General Provisions.

A. Filing - Owners must file an application by April 1 of the year in which classification is first requested with the assessor(s) of the jurisdiction where the property is located. Annual filing is not necessary; however, assessor(s) may request the filing of a new application at any time. The application must be accompanied by a map or sketch showing the different land classifications as well as non-farmland, or non-open space land classification within the tract.

B. Notification of Classification - The assessor(s) must determine whether the land is subject to classification and classify the land as to type and notify the owner of the decision by June 1st of that year. If the application is denied, the assessor(s) must state the reasons for the denial and provide the landowner an opportunity to amend the schedule to conform to the requirements of the statute.

C. Reclassification - Landowners are required to give the assessor(s) notice of any change in farmland or open space land classification. If the landowners do not give notice of any change in classification, the assessor(s) must reclassify the parcel where the facts justify a change in classification or use.

D. Tax Rate - Classified farmland and open space land shall be subject to the same property tax rate applicable to other property in the jurisdiction.

#### E. Valuation of Areas Other Than Farmland or Open Space Land

(1) Forest Land - The 100% valuations for Farm woodland within a classified parcel must be the 100% valuations per acre established for forest land according to the Tree Growth Tax Law. Classified Open Space woodland must be valued at Open Space rate but not less than Tree Growth values.

(2) Other Areas - Areas other than farmland, horticultural land, and open space land, must be valued on the basis of fair market value.

#### 5. Appeal from Assessor(s)

A. Abatement Procedure - Assessments made under this subchapter are subject to the abatement procedures provided by 36 M.R.S.A. §841. The assessors, on written application within 185 days from date of commitment, stating the grounds therefore, or on their own initiative within one year from date of commitment, may make such reasonable abatement as they think proper, provided the taxpayer has complied with section 706.

B. Notice of Decision - The assessor shall by June 1st notify the landowner that his

application has been accepted or denied. If the application is denied, the assessor shall state the reasons for the denial and provide the landowner an opportunity to amend the schedule to conform to the requirements of this chapter within 60 days.

C. State Board of Property Tax Review - An application for review must be filed within 60 days from receipt of the assessors' decision or within 60 days from the date the application for abatement was deemed to have been denied.

D. Superior Court - Any party dissatisfied with the decision of the State Board of Property Tax Review may further appeal to Superior Court in the county where the property is located.

6. Withdrawal of Classification; Penalty

A. Change in Use - If classified farmland or open space land no longer meets the requirement for classification, it may be withdrawn from classification by the assessor(s) or at the request of the owner. Any change in use disqualifying land for classification under this subchapter shall cause a penalty to be assessed.

B. Penalty - Penalties shall be applied as a result of a change in use and the withdrawal of a portion of a classified parcel except when withdrawal is caused by a transfer resulting from the exercise or threatened exercise of the power of eminent domain. That portion of the classified parcel which displays a change in use shall be subject to penalty assessment and enforced as a supplemental tax.

B1. Change from - Farmland to Open Space or Open Space to Tree Growth or Open Space to Farmland may not be penalized if parcel also meets eligibility requirements of the new classification.

C. Determination of Penalty - The penalty shall be an amount equal to one of the following:

C1. Farm Land Penalty:

(1) For land that has been classified as farmland under this subchapter, the penalty shall be the taxes which would have been assessed upon the land for the past 5 years, less all taxes which were actually paid during those 5 years, plus interest at the rate set annually by the municipality during those 5 years of classification.

(2) An owner of farmland that has been classified under this subchapter for 5 full years or more may pay any penalty owed in up to 5 equal annual installments with interest at the rate set by the town to begin 60 days after the date of the supplemental assessment. For an owner paying the penalty under this procedure, the period during which the tax lien mortgage, including interest and costs, must be paid to avoid foreclosure and expiration of the right of redemption is 48 months from the filing date of the tax lien certificate. The increased redemption term from the standard 18-month term is required in order to accommodate the enlarged time to pay under this procedure.

(3) Notwithstanding the above, the recapture penalty for parcels transferred into Farmland from Open Space or Tree Growth shall be the same as the prior classification if the time classified as Farmland is 10 years or less.

C2. Open Space Penalty:

(1) An amount equal to 30% of the difference between the 100% open space valuation (of the classified land on the assessment date immediately preceding withdrawal) and the 100% fair market value of the property on the date of withdrawal.

(2) If the land has been classified for more than 10 years, the following percentages shall

apply to the difference between the open space valuation and the assessed fair market value.

10 years or less	30%
11 years	29%
12 years	28%
13 years	27%
14 years	26%
15 years	25%
16 years	24%
17 years	23%
18 years	22%
19 years	21%
20 years or more	20%

D. Assessed Fair Market Value - Assessed fair market value at the time of withdrawal is the assessed value of comparable property in the taxing jurisdiction adjusted by the certified assessment ratio to 100%.

**IMPORTANT.** In no event may the penalty be less than the minimum required by the Constitution of Maine, Article IX, Section 8:" . . . a minimum penalty equal to the tax which would have been imposed over the 5 years preceding that change of use had that real estate been assessed at its highest and best use, less all taxes paid on that real estate over the preceding 5 years, and interest, upon such reasonable and equitable basis as the Legislature shall determine. Any statutory or constitutional penalty imposed as a result of a change of use, whether imposed before or after the approval of this subsection, shall be determined without regard to the presence of minerals."

#### 7. Valuation Guidelines and Program Promotion

The Department of Agriculture, working with Maine Revenue Services, and representatives of municipal assessors and farmers, must prepare valuation guidelines to assist local assessors in the valuation of farmland. The suggested guidelines include values for crop land, orchard land, pasture land and horticultural land. The values recommended are designed to enlighten Maine citizens to the existence of the Farm and Open Space Tax Laws as well as providing regional information to local farm organizations and municipal tax assessors.

#### **Guidelines for Agricultural Valuation**

The following **GUIDELINES** were derived by the Department of Agriculture and Maine Revenue Services after review of commentary from the assessing and agricultural communities.

The **CATEGORIES** indicated vary somewhat relative to language found in the law; our attempt to reconcile that language with typical Maine farming practices follows.

**SUGGESTED VALUES** are a correlation of market data analysis and income streams attributable to agricultural enterprise.

Upon consideration of the various **ADJUSTMENT FACTORS** relative to regional or statewide averages, assessors may elect to develop localized values. However, the local assessors must substantiate any variation in assessment of farmland from the recommended values.

**PASTURE LAND**...Land devoted to the production of forage plants consumed by animals. This includes grazing land, hay, ensilage, corn for ensilage and any other crops grown for forage.

\$325 per acre suggested value - observed range \$100 - \$525.

**CROP LAND**...Land used for field grown crops such as a typical Maine potato farm. This would

include usual crops grown in rotation with potatoes - corn for grain, small grains, lupines, broccoli, etc.

\$400 per acre suggested value - observed range \$150 - \$600.

**BLUEBERRY LAND**...Land devoted to production of wild low-bush blueberries.

\$400 per acre suggested value - observed range \$200 - \$800.

**HORTICULTURAL LAND I (EDIBLE)**...Land used for intensive vegetable and small fruit production, market gardening, strawberries, raspberries, high-bush blueberries, etc.

\$450 per acre suggested value - observed range \$350 - \$650.

**HORTICULTURAL LAND II (ORNAMENTAL)**...Land used for production of planted and cultivated Christmas trees, flowers, sod, shrubs, trees and general nursery stock.

\$550 per acre suggested value - observed range \$425 - \$850.

**ORCHARD LAND**...Land devoted to the growth and cultivation of trees bearing edible fruit. There should be a minimum stocking density equivalent to 60 trees per acre.

\$450 per acre suggested value - observed range \$350 - \$800. (For standard/full size varieties)

\$650 per acre suggested value - observed range \$450 - \$1150. (For dwarf and semi-dwarf varieties)

### **ADJUSTMENT FACTORS**

Soil type, conservation measures, convenience and proximity to the farmstead, field size and shape, slopes, drainage, aeration, accessibility to and choice of markets, rocks, climate, commodity yield and price.

NOTE: This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. If further information is needed contact the Property Tax Division, PO Box 9106, Augusta, ME. 04332, Tel. (207)287-2011(voice) or (207)287-4477(TTY).

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